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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION ONE

THE PEOPLE,

Plaintiff and Respondent,

v.

KAHLIL RAHIM KEITH,

Defendant and Appellant.

A151283

(Sonoma County
Super. Ct. No. SCR665657)

Defendant Kahlil Keith stabbed to death a friend of his, Willie Smith, during a fight. A jury convicted Keith of voluntary manslaughter, finding that he had acted in imperfect self-defense, and the trial court sentenced him to nine years in prison. On appeal, Keith claims that the court erred by admitting evidence of his character for violence under Evidence Code section 1103, subdivision (b), which was offered to rebut evidence of Smith's character for violence.¹ We affirm.

I.
FACTUAL AND PROCEDURAL
BACKGROUND

A. *Keith and Smith Hang Out Together at Smith's House.*

In May 2015, Smith lived with a few other people in a Catholic Charities house for the homeless in Santa Rosa. On Mother's Day, Smith spent time with his sister and then watched a movie and had drinks with two of his housemates, Kim H. and Kim H.'s

¹ All further statutory references are to the Evidence Code unless otherwise noted.

girlfriend. Kim H. testified that Smith, who was in a good mood and did not seem intoxicated, left the house around 10:00 p.m.

Smith met up with Keith, who was also part of the local homeless community. Smith and Keith, who testified in his own defense, had been friends for a few years, and Keith sometimes stayed at Smith's camp. Until Smith moved into the Catholic Charities house, the two men saw each other regularly. Keith testified that their relationship had its "ups and downs" like any friendship, but they had never physically fought. At the time of the killing, Keith was "extremely thin" at six feet, five inches tall and about 180 pounds, and Smith was shorter but "stout."

Smith invited Keith back to his house, and they went to Smith's bedroom. Smith told Keith that "he needed to take a shower" because he smelled, and Keith did so. They then watched a movie, drank some alcohol, and smoked marijuana. Keith testified that he had only "a little buzz," but Smith drank much more and "was getting beyond tipsy."

C.F., another housemate of Smith's, testified that she went to bed sometime after midnight. At one point, C.F. woke up to take out her dog and "heard music coming from Willie's room and laughter. It sounded like he was having a good time." Similarly, Kim H. testified that after he and his girlfriend went to bed, Smith kept bothering them and started playing loud music. Smith now appeared intoxicated, although he "was still pretty happy."

B. Smith Threatens Keith, and They Fight.

Keith testified that he and Smith were sitting in the bedroom "having a good time" when Smith "aggressive[ly]" said, "I want to suck your dick." Keith was "pretty shocked," because although some of his gay friends had propositioned him before, he "didn't expect that from [Smith]." Keith "turned over and acted like [he] was going to sleep," but Smith told Keith they should "just do it." After Keith refused and sat up, Smith "balled his fist up and looked right at [Keith] and said, I'll beat your ass."

Keith testified that, feeling threatened, he punched Smith in the face. Smith hit Keith back, and they "started scuffling and fighting." Keith was able to get on top of Smith to subdue him, at which point Keith said, "Willie, stop, I'm your friend."

Corroborating this testimony, Kim H. stated that around 2:00 a.m., he and his girlfriend heard the sound of “an obvious tussle” coming from Smith’s room. Kim H. heard someone other than Smith yell, “Willie, you’ve got to stop this. We’re supposed to be friends.”

Keith testified that after he told Smith to stop, Smith stopped struggling. Keith got up, gathered his belongings, and left the room. After Keith went back in to get his jacket, however, Smith blocked the door to prevent him from leaving. When Keith tried to go by, Smith pushed him, and Keith said, “Willie, I just want to leave, man, let me leave.”

Similarly, C.F. testified that she heard “a physical altercation” and “furniture . . . getting knocked around” and left her room. Someone inside Smith’s room was “trying to get out of the room, and [Smith] was not allowing them to. He was kind of blocking the door and kind of shoving them back.” Smith appeared “[v]ery” intoxicated and had some blood on his face. Keith, whom C.F. did not know, “was basically asking [Smith] to let him go.”

C. C.F. Escorts Keith Outside.

C.F. asked Smith to let Keith leave, and Smith “backed off.” According to Kim H., Smith liked C.F., and “her appearance alone kind of calmed [Smith] down a little bit.” C.F. escorted Keith downstairs and out the front door without interference from Smith, although she could hear Smith “screaming.”

C.F. testified that Keith told her Smith had asked to “suck his dick.” She described Keith, who did not appear intoxicated, as “shocked, upset as in hurt, offended, violated.” Keith insisted that “[h]e wasn’t that way and . . . didn’t know why [Smith] would proposition him like that.” Keith told C.F. “that if it happened again, . . . he would defend himself if necessary.”

When C.F. and Keith went outside onto the porch, Keith was barefoot and holding his belongings. He went to put on his shoes and discovered he did not have his socks, and he started to cry. C.F. asked whether Keith had anywhere to go, and he said he did not. She told him to wait and went to talk to her boyfriend, whose car she had noticed was parked nearby.

D. The Stabbing and Its Aftermath.

After C.F. walked away, Keith heard Smith yell his name. Keith testified, “I knew he was going to come out of the door, and after what happened before, I was kind of scared, so I reached in my bag and grabbed out my knife.” Keith explained that he carried the knife, which had a long blade, because he had “been through a lot of scary situations on the street” since becoming homeless years before. Smith came outside, and Keith said, “Stay away from me, I’ll cut you.”

According to Keith, Smith then punched him in the jaw. Keith testified that he “saw stars” and realized that Smith had wrapped his arms around him and was “wrestling” with him. Keith punched Smith back and told him to stop. Still holding Keith, Smith then “tried to slam” him by pushing him from side to side. As Keith lost his balance, “[he] figured that [he] was going to fall, [Smith] was going to be on top of [him], and if [he] dropped the knife and [Smith] got ahold of [him], [Smith] was going to kill [him] with it.”

Keith testified that, feeling “afraid for [his] life,” he then stabbed Smith. Keith explained, “[From] my point of view, somebody that’s going to attack a person unarmed [when] that other person has that big of a knife obviously does not give a damn about you and wants to kill you or at least do really serious harm to you.” After Keith pulled the knife from the other man’s body, Smith staggered a short distance and fell. Panicking, Keith left the scene.

C.F. testified that as she was at the car speaking to her boyfriend, she heard “commotion” and Smith speaking angrily. She turned and saw Smith and Keith “traveling from the porch down the drive” and heard “a physical altercation,” although she could not see exactly what was happening. She immediately walked back to the house and saw that Keith had disappeared and Smith was lying on the ground. Believing Smith had merely passed out, C.F. went inside and asked Kim H. to help her bring Smith into the house. Kim H. testified that when he and C.F. went back outside, he saw Smith lying on the sidewalk in “a puddle of blood.” They called 911, and Kim H. unsuccessfully performed CPR on Smith.

Smith's autopsy revealed that he had died from a stab wound to his chest. He had a blood-alcohol content of .237 percent and a small amount of methamphetamine in his system, and he had recently smoked marijuana. Keith was arrested several hours later, and he testified that upon learning Smith had died, he felt "[f]labbergasted, complete and utter hopelessness and just hurt. I couldn't believe it. I didn't want him to die, I didn't, and he was my friend."

E. The Verdict and Sentencing.

Keith was charged with murder, but the jury acquitted him of that crime and instead found him guilty of voluntary manslaughter. It also found that he personally used a deadly or dangerous weapon during the offense.² After he admitted to serving two prior prison terms, the trial court sentenced him to nine years in prison, composed of a term of six years for voluntary manslaughter and consecutive terms of one year each for the three sentencing enhancements.³

II. DISCUSSION

A. Additional Facts.

Before trial, Keith sought to introduce evidence of Smith's character for violence, and in response the prosecution sought to introduce evidence of Keith's character for violence. The trial court excluded a substantial portion of the evidence proffered by the prosecution, including on the grounds that it was remote in time and involved Keith's behavior while in custody. The court did rule, however, that Keith's parole agent could testify about his reputation for violence and three percipient witnesses could testify about particular incidents during which he was violent.

² Keith was convicted of voluntary manslaughter under Penal Code section 192, subdivision (a), and the personal-use allegation was found true under Penal Code section 12022, subdivision (b)(1).

³ The prior-prison-term enhancements were imposed under Penal Code section 667.5, subdivision (b).

1. Evidence of Smith's character for violence.

Kim H. testified that Smith, whom he had known for over 20 years but did not consider a friend, had a reputation for being "a bully" when he was drunk. In Kim H.'s words, "If Willie was loaded, he could get volatile at any time." C.F. had been told "to watch out" for Smith before she moved into the Catholic Charities house. She testified that although he was "well loved" in the homeless community, "he did have a dark side" and "was always volatile, easily agitated."

C.F. and Kim H. also testified about specific instances of Smith's violent behavior. C.F. stated that Smith, who was physically "scary" when he was angry, was often "verbally abusive" with her. Once, when she forgot to give him a receipt for some food she bought with his card, he "flipped out" and "threatened to cut [her] head off and piss down [her] throat." On another occasion, he told her that it was "a good thing that [she] stay[ed] close to the house because [she] wasn't safe if he [saw] her away from the house."

Kim H. confirmed that he had heard Smith threaten C.F. and others in the house with physical harm on several occasions. In addition, a couple weeks before Smith's death, Kim H. witnessed a physical fight between Smith and another housemate who soon moved out. The two exchanged words and, after Smith approached the other man, they began "trading punches."

2. Testimony about Keith's character for violence.

a. The parole agent's testimony.

Keith's parole agent testified that she supervised Keith from 2010 to 2014. She said it was her practice to get to know the people she supervised, explaining, "We have to know whether they have any drug issues, alcohol issues, violence. We have to know their criminal history basically to know who we are supervising and at what level we should supervise them." She agreed that Keith had a "reputation for violence" during the time she supervised him. Specifically, she testified, "[H]e would get into altercations with people. I remember a few people from SFPD told me just to be careful because, you know, when he gets drunk he gets violent."

The parole agent also testified about a particular incident involving Keith. Soon after she began supervising him, he was kicked out of a substance abuse program “because he went off on the program manager,” who told the parole agent that “Keith was aggressive towards him, cussed him out, [and] threatened him.” Keith did not, however, actually touch the manager. Keith explained to his parole agent “that he basically had a relapse, he was intoxicated, he went out and got drunk, and came back and went off on the guy. Keith stated that when he gets drunk he does stupid things.”

b. The 2009 incident.

A former San Francisco police officer testified that in 2009, he arrested Keith after he saw Keith “put another gentleman in a headlock and then ram his head into a concrete wall” in U.N. Plaza. After the victim “collapsed,” Keith kneeled on the victim and went through the victim’s pockets. The officer testified that Keith, who did not appear to be intoxicated, explained the assault by saying only that it was “because of his brother.”

Keith testified that at the time, he was addicted to heroin and “pretty close to being sick, to going through withdrawals.” He explained that he attacked the man because the man had threatened Keith’s friend. Although Keith admitted to going through the man’s pockets, he claimed he did not intend to steal anything and “[i]t was more as a form of disrespect because [the man] disrespected his friend.” Keith admitted that he was convicted of assault with force likely to inflict great bodily injury as a result of the incident.

c. The 2012 incident.

Another San Francisco police officer testified that in 2012, he was dispatched to Seventh and Market Streets for a reported fight. The officer quickly located the victim, who had cuts on his head. The victim pointed out Keith, who was walking away with another man. When the officer and his partner contacted Keith, Keith hid behind a lamppost. Concerned because Keith was wearing a backpack that might contain weapons, the officer drew his gun and ordered Keith to show his hands. As Keith put down the backpack, the officer heard “what sounded like a heavy metal object hit the

ground.” After detaining Keith, who appeared to be drunk, the officer located a two-pronged metal object matching the victim’s wounds.

Keith testified that on the day in question, he was not doing well because he had just “lost” his girlfriend, had become more seriously addicted to heroin, and was going through withdrawal from alcohol. In addition, he did not have any of his personal belongings because they were locked in the car of a friend who had been arrested. The victim, an “older gentleman,” approached and started hassling another man in Keith’s group. Keith testified, “I was already stressed out, I didn’t want to hear all that negativity and all that disrespect, and I told him, dude, get away from me, and his response was, fuck you, punk, and he had a cane in his hand, which basically can be used as a weapon, and because of that I struck first, he hit me a few times, it was a fight, and I’m pretty sure I overreacted, but if he was my friend and the situation were different, I probably wouldn’t have acted that way.” Keith admitted that the weapon he used during the fight, which “was some kind of metal tool,” was an item he carried for protection.

d. The most recent incident.

Finally, a homeless man testified that he knew both Keith and Smith and routinely drank with them. In the months leading up to Smith’s death, the man had seen Keith and Smith together in the encampment where Smith lived “a lot of times,” and he believed that the two other men were on good terms.

The man testified that he saw Keith fighting with other people (though not Smith) “all the time.” Once, the man was at a 7-11 store with his girlfriend’s brother when the brother and Keith got in a fight over a small bottle of vodka. When Keith tried to take the bottle from the brother, the brother grabbed it back, at which point Keith “swung at him” with a “bike lock thing.” According to a Santa Rosa police officer, however, the man reported Keith had tried to hit the brother with a soda can, not a lock. The man admitted that he was drunk at the time of the 7-11 fight and that drinking affected his memory.

B. *General Legal Standards.*

“[C]haracter evidence is generally inadmissible to prove a person acted in conformity with it on a given occasion.” (*People v. Myers* (2007) 148 Cal.App.4th 546,

552.) One exception to this rule is section 1103, subdivision (b) (section 1103(b)), which permits the admission of “evidence of the defendant’s character for violence or trait of character for violence (in the form of an opinion, evidence of reputation, or evidence of specific instances of conduct) . . . if the evidence is offered by the prosecution to prove conduct of the defendant in conformity with the character or trait of character and is offered after evidence that the victim had a character for violence or a trait of character tending to show violence has been adduced by the defendant.”

Even if evidence is admissible under section 1103(b), it may be excluded under section 352 “if its probative value is substantially outweighed by the probability that its admission will (a) necessitate undue consumption of time or (b) create substantial danger of undue prejudice, of confusing the issues, or of misleading the jury.” (§ 352.) We review the trial court’s evidentiary rulings, including those under section 352, for an abuse of discretion. (*People v. Sanchez* (2019) 7 Cal.5th 14, 39; *People v. Fuiava* (2012) 53 Cal.4th 622, 663 (*Fuiava*).)

C. The Parole Agent’s Testimony Was Admissible Under Section 1103(b).

Keith makes two conclusory assertions about his parole agent’s testimony in arguing that it did not qualify for admission under section 1103(b). First, he claims that her statements about his general reputation did not meet the hearsay exception under section 1324 for such testimony. That statute authorizes the admission of “[e]vidence of a person’s general reputation with reference to his [or her] character or a trait of his [or her] character at a relevant time in the community in which he [or she] resided or in a group with which he [or she] then habitually associated.” There is some ambiguity in the record as to whether the parole agent learned of Keith’s reputation from other parole agents or from police officers. But whichever is the case, Keith fails to convince us that the law-enforcement community did not qualify as a community or group with which he “habitually associated” (§ 1324), given his criminal history and his parole status.

Second, Keith claims that his parole agent’s testimony that he “got drunk and verbally harangued his program director . . . is not evidence of a character for violence.” We agree with the Attorney General, however, that the trial court could have reasonably

concluded that evidence of Keith's behavior toward the program manager, which was "serious enough to result in [Keith's] discharge, [was] sufficiently threatening to demonstrate" a violent trait. We conclude that the parole agent's testimony qualified for admission under section 1103(b).

D. The Trial Court Did Not Abuse its Discretion Under Section 352.

Keith also argues that all of the testimony about his character for violence should have been excluded under section 352 because it had very limited probative value and was highly prejudicial. We are not persuaded.

Keith claims that all of the challenged evidence "had virtually no probative value at all." In particular, as to the 7-11 incident, Keith claims that the witness's testimony was "garbled" and confused and the incident had little similarity to the homicide. He claims the 2009 and 2012 incidents were also insufficiently similar to the homicide.

To begin with, we give little weight to the cases Keith cites that involve the admission of evidence of a defendant's prior uncharged acts under provisions other than section 1103(b). (E.g., *People v. Williams* (2018) 23 Cal.App.5th 396, 421 [addressing section 1101, subdivision (b)]; *People v. Johnson* (2010) 185 Cal.App.4th 520, 531 [addressing section 1109].) Unlike those statutes, which permit the introduction of prior uncharged acts under certain circumstances, section 1103(b) authorizes the prosecution to introduce evidence of a defendant's *character* more broadly, to rebut evidence of a victim's character. Thus, although evidence of prior bad acts must have some similarity to the charged offense to be admissible under statutes like sections 1101, subdivision (b) and 1109, evidence admitted under section 1103(b) need suggest only that "the defendant was a violent person, from which the jury might infer it was the defendant who acted violently." (*Fuiava, supra*, 53 Cal.4th at p. 696.)

In any case, we conclude that the challenged evidence was highly relevant, and the trial court did not abuse its discretion by admitting it. Keith is correct that, because he claimed he acted in self-defense, it was undisputed that he intentionally killed Smith. We cannot agree, however, that this rendered evidence of Keith's violent character cumulative and irrelevant. As he recognizes, whether he had an actual and reasonable

belief in the need for self-defense was still at issue, and evidence that he violently attacked others with little or no provocation was probative of whether he acted in self-defense when he stabbed Smith. Although evidence of one's character for violence is intrinsically prejudicial (see *People v. Williams* (1988) 44 Cal.3d 883, 904), we cannot say that the evidence of Keith's prior conduct—none of which was as serious as the homicide—was *unduly* prejudicial given its probative value.

Finally, even if there was any error, it was harmless under *People v. Watson* (1956) 46 Cal.2d 818, 836. (See *People v. Trujeque* (2015) 61 Cal.4th 227, 280; *People v. Gutierrez* (2009) 45 Cal.4th 789, 828.)⁴ In acquitting Keith of murder and convicting him of only voluntary manslaughter, the jury found that he had an actual but unreasonable belief in the need for self-defense. Thus, he could have received a more favorable verdict—i.e., a full acquittal—only if the jury had concluded that his belief he was in imminent danger of death or great bodily injury was in fact objectively reasonable. (See *In re Christian S.* (1994) 7 Cal.4th 768, 783.) But Keith's belief that he was in danger was speculative: Keith testified that he stabbed the unarmed Smith because he was afraid of falling and dropping the knife, which might have allowed Smith to get ahold of it and use it. We conclude there is no reasonable probability the verdict would have been different had the challenged evidence been excluded.

III. DISPOSITION

The judgment is affirmed.

⁴ Keith acknowledges that the *Watson* standard applies, but he also claims that “the process permitted by” section 1103(b) violates the federal Constitution because it results in an unfair trial and violates the right to an impartial jury. (Capitalization and boldface omitted.) As he recognizes, we are bound by our state Supreme Court's rejection of such arguments in *Fuiava*, *supra*, 53 Cal.4th at pages 699–700. Thus, we express no opinion on whether, as he asserts, *Fuiava* “was wrongly decided . . . and . . . should be disapproved by the high court.”

Humes, P.J.

WE CONCUR:

Margulies, J.

Banke, J.